

**[Unapproved and Subject to Change]**  
**CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION**  
**MINUTES OF MEETING, Public Session**

February 16, 2006

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (Commission) to order at 9:50 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Sheridan Downey, Phil Blair, and Ray Remy were present. Commissioner Huguenin was ill and unable to attend.

**Item #1. Public Comment.**

There was none.

**Consent Items #2-8.**

Commissioner Downey pulled item #7, **Failure to Timely File Major Donor Campaign Statements.**

- a. In the Matter of Yoshinoya West, Inc. d.b.a. Beef Bowl Restaurants, FPPC No. 05-817.** Yoshinoya West, Inc. d.b.a. Beef Bowl Restaurants of Torrance failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000.00 in 2004 (1 count).
- b. In the Matter of Jeffrey S. Moorad, FPPC No. 05-836.** Jeffrey S. Moorad of Newport Beach failed to timely file a semi-annual campaign statement disclosing contributions totaling \$25,000.00 in 2004 (1 count).
- c. In the Matter of Gibson, Dunn & Crutcher, LLP, FPPC No. 05-852.** Gibson, Dunn & Crutcher, LLP of Los Angeles failed to timely file semi-annual campaign statements disclosing contributions totaling \$33,450.00 in 2002, \$15,950.00 in 2003 and \$11,650.00 in 2004 (3 counts).
- d. In the Matter of Cisco Systems, FPPC No. 06-001.** Cisco Systems of Mill Valley failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000.00 in 2003 (1 count).
- e. In the Matter of L. Thomas Lakin, FPPC No. 06-025.** L. Thomas Lakin of Malibu failed to timely file a semi-annual campaign statement disclosing contributions totaling \$10,000.00 in 2003 (1 count).

Commissioner Remy moved to approve the following items in unison:

**Item #2. Approval of the January 20, 2006, Commission meeting minutes.**

**Item #3. In the Matter of Jon Lauritzen, Jon Lauritzen for School Board, and Kinde Durkee, FPPC No. 03/231 (1 count).**

**Item #4. In the Matter of Consumer Attorneys Association of Los Angeles, FPPC No. 05/487 (4 counts).**

**Item #5. In the Matter of Anita Grier, FPPC No. 05/469 (1 count).**

**Item #6. In the Matter of Quynh Kieu, FPPC No. 04/538 (1 count).**

**Item #8. In Failure to Timely File Late Contribution Reports – Proactive Program.**

Commissioner Blair seconded the motion. Commissioners Downey, Blair, Remy, and Chairman Randolph supported the motion, which carried with a 4-0 vote.

#### **ITEM REMOVED FROM CONSENT**

**Item #7. In Failure to Timely File Major Donor Campaign Statements.**

Commissioner Downey spoke specifically about item #7 (c), the Matter of Gibson, Dunn & Crutcher, LLP, in which the firm had not filed its Form 461 for three consecutive years. During that time the agency had made several contributions to various candidates, both local and statewide, totaling \$61,050. The firm was fined only \$1534.50. Commissioner Downey wondered why the fine was so low compared to others issued for violations by other agencies.

John Appelbaum, Chief of the Enforcement Division, explained that there is a formula that was set by the Commission that is used in determining the fine amounts.

Commissioner Downey asked what the formula is.

Bill Williams, Enforcement Division, explained that the formula is 15% for Late Contribution Reports (LCR) and it is capped at \$3,500. Major donor is \$400 and there can be enhancements if it goes over \$50,000 or if there are more than ten donors on the major donor statement. The enhancements are checked to make sure that they reflect what was done in terms of the number of donors.

Commissioner Downey noted that the firm went three straight years without filing and then were given what seems to be a minor fine considering the amount the contributed.

Mr. Appelbaum replied that it is a policy call and usually if the contributions are under \$100,000 for major donor reporting, the filer is kept in the Streamlined Program unless there is a prior history of violations or other problems in the past. Gibson, Dunn & Crutcher is not a firm that has a prior history that would cause it to fall out of the program.

Chairman Randolph confirmed that there were three counts at \$400 for each count and then enhancements were given because the amount was over \$50,000 and because there were more than ten donors. That is currently the formula being used and if the Commission does not agree with that number then the formula will have to be reviewed.

Commissioner Downey explained that the intention in having questioned the item had been to gain a better understanding of the policy that it being enforced because the fine amount appeared low.

Chairman Randolph asked if it would be helpful to bring back the formulas to determine if there is any update needed.

Commissioner Blair said that bringing the formulas back for review would be a good idea because the fine did seem low and the policy has not been reviewed in quite a while.

Chairman Randolph said that a review of the formulas will be scheduled for a later date.

Commissioner Blair moved to approve item #7. Commissioner Downey seconded the motion which passed with a 4-0 vote.

## **ACTION ITEMS**

### **Item #9. Update: FEC Response to the Commission's Request for an Advisory Opinion; Proposed May Pre-notice Discussion of Regulations 18530.3 and 18534.**

Larry Woodlock, Legal Division, gave an update on the Federal Election Commission's (FEC) response to the Commission's request for an advisory opinion relating to the anticipated regulation on mixed federal and state expenditures. The FEC expressed an unwillingness to proceed with an advisory opinion when the regulation has not been adopted because there is no certainty what the terms will eventually be. Staff proposes going ahead with the rule making and get a regulation adopted and then go back to the FEC for an opinion.

Chairman Randolph asked for any public comment.

There was none.

Chairman Randolph asked for any questions from the Commission.

There were none.

Chairman Randolph asked that this item be scheduled for the July meeting.

Mr. Woodlock gave a second update regarding the hard and soft money regulation. This regulation will be of interest to committee treasurers and others associated with political party

committees. It would be useful to bring this matter back in July because the same community of people will be interested in this regulation as will be in the FEC matter.

Chairman Randolph asked if there were any objections.

There were none.

Chairman Randolph asked that this item be scheduled for July as well.

**Item #10. Prenotice Discussion of Amendments to Regulations 18942 and 18944 – Gift Regulations Involving Wedding Gifts, Baby Showers and Receptions.**

Emelyn Rodriguez, Legal Division Staff Counsel, presented for prenotice discussion proposed amendments to regulations 18942 and 18944. These changes deal with regulations relating to gifts received through attendance of wedding receptions, birthdays and similar occasions as well as gifts given to an official but intended for use by the official's child. These changes are proposed, in part, to clarify the scope of the invitation-only events regulation 18946.2(b). This regulation was recently amended to provide for reporting of events such as a banquet, party, or similar function by public officials and candidates. However, a strict application of the definition of invitation-only events under this regulation would encompass attendance at events of personal significance such as weddings and birthday parties. A public official or candidate in attendance would, therefore, be required to report his or her pro rata share of the cost of the event. Thus, this regulatory project deals with two main issues. First, it attempts to narrow the scope of the invitation-only events regulation, and secondly, it would further codify the Commission opinion and subsequent staff advice with regard to family gifts. This is a codification of a Commission opinion, *In re Cory* (1976) and subsequent staff advice. These changes are consistent with the general purpose of the reporting provisions of the Political Reform Act "Act", which require disclosure of those transactions that, due to their economic or monetary effect, might improperly influence a public official. They are also consistent with the Commission's long-standing view that certain transactions such as an exchange of gifts due to family ties or personal friendships where the intent is not to curry political favor with the recipient, are outside the policy considerations of the Act.

Ms. Rodriguez explained that this regulatory project was proposed last year after inquiries were received from the regulated community expressing concern that the definition of invitation-only events was so broad as to include attendance of wedding receptions. Concerns were also raised about the lack of specific provisions covering the reporting of gifts given directly to an official but intended for use by the official's child such as baby shower presents. The proposed amendments 18942 (a)(8) would clarify that food, drink, entertainment, and nominal benefits received by an official attending an event such as a wedding reception, birthday, holiday, or other similar occasion that is hosted by an honoree or another individual who is not a lobbyist fall under the "gifts exchanged" exception of section 89503(e)(2). Therefore, they are not subject to gift limits and reporting rules so long as the gifts exchanged are not substantially disproportionate in value. Wedding presents will continue to be reportable but not subject to gift limits under regulation 18942(b)(2). In addition, proposed amendments to regulation 18944(a)

would add a specific provision stating that gifts given directly to an official but intended for use of the official's child are gifts to the child. This proposed language clarifies and codifies existing Commission opinion and advice with respect to family gifts. Staff recommends approval to notice the proposed amendments to regulations 18942 and 18944 at the April meeting.

Commissioner Downey asked regarding the opening sentence of 18942(a), which reads "none of the following is a gift and none is subject to any limitation on gifts," if a reference to the Act of 1974, specifically section 82028 which has a definition of "gift" in the opening section, be added.

Chairman Randolph asked if the concern was that it is being said that "none of the following is a gift."

Commissioner Downey replied that it is a drafting question and not a substantive one.

Chairman Randolph asked if there should be a reference to the specific statutory definition of "gift" or if it should just read "pursuant to the Act." The latter seems redundant because all of the regulations are pursuant to the Act but the former seems to be the way to approach it.

Commissioner Downey wondered if there would be any fallout to saying "none of the following is a gift under section 82028."

Luisa Menchaca, General Counsel, explained that staff will look into adding the reference to 82028 and it would improve the regulation. In some parts of the regulation the word "lobbyists" is excluded because lobbyists are subject to a definition of gift which includes direct and indirect benefits to public officials and that definition is in chapter 6, which is a different section. Therefore, if the reference to 82028 is added there would be a better understanding for those not very familiar with the Act.

Chairman Randolph asked if that meant that the Commission needed to go through all the regulations and check to see if that reference needs to be added to any other regulations.

Ms. Menchaca opined that there are four or five regulations that staff can go through, but this regulation is most likely the only one that would benefit from the reference.

Commissioner Remy asked if gifts given to an official's whole family, such as a weekend vacation, would be fully attributed to the official if the whole family went.

Ms. Rodriguez replied that is correct because gifts given to members of an official's immediate family that also benefit the official to the same extent as the family members, would be fully attributable to the official. The gift would be subject to limits.

Chairman Randolph asked for any public comment.

Scott Hallabrin, of the Assembly Ethics Committee, had some drafting questions regarding the language in the regulation. The first comment pertained to regulation 18942 and the use of the

word “subdivision” in the opening of the amendments. That appears to refer back to the entire paragraph A, and not subdivision (a)(8). In other regulations, the Commission says “subdivision” referring to the paragraph and not to sub-paragraphs. On the substantive issue, there seems to be some clarification needed because the regulation could appear to say that any event in which there is food served is not an issue. To accomplish the distinguishing of the regulation from the invitation-only rule, it may be better to say “notwithstanding the invitation-only regulation, food received as part of a gift exchange event is not a gift.” Mr. Hallabrin also mentioned, regarding the language itself, that the word event be more specific.

Commissioner Downey asked Ms. Rodriguez if there would be an exchange of gifts if an official attends a wedding of an assembly member’s child but does not bring a gift.

Ms. Rodriguez explained that the exchange of gifts could occur at another time and if no gift exchange occurred, the official would have to report it.

Commissioner Blair asked if what is currently written says that if no gift is given, the value of the official’s pro rata share of the cost of the wedding needs to be reported.

Ms. Menchaca replied that the way the language is drafted the regulation says that the gift exchange includes the present. If the language were written to say “at which the gift exchange occurs,” then there would need to be a gift brought to the event.

Chairman Randolph suggested using the word “occasion” instead of “event” because “occasions” is used further.

Ms. Rodriguez explained that the gifts exchanged language is a limiting language because to leave it open, staff believed would leave it subject to abuse. To fall under the exception, there has to be some kind of exchange.

Chairman Randolph asked if there were any other questions on this issue.

There were none.

Mr. Hallabrin explained that regulation 18944 is confusing because subdivision (a) says that if the official gets a use out of the family gift, then it is a gift to them. That implies that as long as the official gets no use out of the gift, it is acceptable. However, subdivision (d) says that if there is benefit, then it is still a gift. It does not seem possible to get a use without getting a benefit.

Chairman Randolph replied that the difference is that subdivision (a) states “gifts given to members of the immediate family” and subdivision (d) says “gifts given to the official and the immediate family.”

Mr. Hallabrin asked if the gift has to be given to the whole family or just one member of the family.

Chairman Randolph suggested clarifying that the gift could be given to any member of the official's immediate family.

In response to a question from Commissioner Remy, General Counsel Luisa Menchaca explained that gifts to members of one's "immediate family" did not include adult children. "Immediate family" includes dependents only.

Mr. Hallabrin expressed confusion with the *In re Cory* opinion that was referenced in the memo in that there is a part missing that explains a type of gift that would not be meant to influence the official. The opinion combines the use and the benefit in the same concept while the regulation splits them.

Chairman Randolph said that the third prong in the opinion says that "there are no additional circumstances negating an intent to make an indirect gift to the official." Therefore, if the facts are that the donor was actually trying to circumvent the rules and give a gift to the official's spouse knowing that it would benefit the official, then the rule would not apply.

Mr. Hallabrin said that adding the third prong would clear up much of the confusion in the regulation.

Chairman Randolph suggested having staff redraft the regulation starting from the beginning and taking another look at the *In re Cory* opinion to try and draft the regulation to more closely track the language of the opinion.

Ms. Menchaca recommended a second prenotice on this issue to allow staff to propose various scenarios.

Chairman Randolph said that the pre-notice is set for April.

#### **Item #11. Prenotice Discussion of Amendments to Regulation 18537.1 (Carry Over of Contributions).**

Chris Espinosa, Executive Fellow, presented for prenotice discussion proposed amendments to regulation 18537.1. These changes deal with two issues relating to the "carry over" of campaign contributions in a "subsequent election for the same elective state office." These amendments are offered to clarify regulatory language reflecting the Commission's interpretation of section 85317. Government code section 85317 states that notwithstanding subdivision (a) of section 85306, a candidate for elective state office may carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office. This regulatory project first deals with how a candidate for elective state office should carry over funds which were raised in a primary election to the subsequent general election, should it be with or without attribution. Regulation 18537.1 is currently silent on how money should be carried over from a primary election to a general election. This lack of specificity has caused some confusion among interested parties who are affected by this regulation. Historically, the existing regulation as

written has always been interpreted to include both primary and general elections as a subsequent election for the same elective state office. Therefore, contributions could be carried over from the primary to the general without attribution. This amendment would explicitly state that subsequent election for the same elective state office also refers to the general election, which is subsequent to and connected to the primary election for which the funds were raised or the special general election, which is subsequent to and connected to the special primary election for which the funds were raised.

Mr. Espinosa continued with the second issue being addressed with this regulatory project. The issue involves candidates who establish campaign committees for a state elective office, then either fail to file the required documents to be placed on a ballot or withdraw from an election prior to it taking place. This issue has come to the attention of the Commission staff and is considered a problem since campaign funds raised during these previous campaigns may be transferred under the current language of regulation 18537.1 without attribution during the next election campaign. Thus, allowing candidates to receive double contributions from the same contributor. Proposed subsection (d) of this regulatory project was crafted to limit double contributions from the same contributor as it relates to the aforementioned scenarios. Therefore, two options have been proposed to resolve this issue. The first option describes a candidate who establishes a bank account for an election but does not file the necessary documents to appear on the ballot in that election. The second option describes a candidate who withdraws from an election prior to an election being held. Both of these options prohibit candidates from carrying over campaign funds in their respective situations but instead they may transfer funds with attribution pursuant to government code section 85306. Decision Point 1 involves whether subsection (d) should address withdrawn candidates or be limited to situations where candidates establish a campaign bank account, then fail to complete the required documents to be placed on the election ballot. Filing the Candidate Intention (Form 501) in order to raise funds and then failing to get on the ballot is a bright line rule that makes the candidates subject to subsection (d) clearly identifiable. On the other hand, using the broader term would allow the Commission to exclude from the carry over provision candidates who file Form 501, appear on the ballot, and yet still fail to campaign or do so in a token manner. However, identifying and taking enforcement action against a “withdrawn candidate” for an alleged Act violation may be difficult in this situation. The third option would be to adopt both. As stated previously, the proposed regulatory amendments would provide language clarifying the Commission’s interpretation of section 85317. Mr. Espinosa concluded, offering to answer any questions.

Chairman Randolph suggested a change in the drafting of subdivision (c)(2). It seems more logical to say “the general election, which is subsequent to and for the same term of office as the primary election” and that would also be repeated in (c)(3).

Mr. Espinosa had no objection to the change in language.

Commissioner Downey asked about subdivision (b)(3) having a reference to Government Code section 89519, which defines surplus campaign funds. In order to carry over funds without attribution, the funds cannot be surplus campaign funds under that section. A losing candidate would have to form a committee for the next assembly election before the expiration of the period specified in section 89519.



Carla Wardlow, Chief of Technical Assistance, said that is correct. The candidate would have to open a new bank account, file a new Form 501, and transfer the money over before the next expiration.

Commissioner Downey replied that there seems to be a loophole where a candidate who wants to raise money to run for something could open more than one committee and actually have no intention of running for any of those offices and never file the associated documents. In due course, the candidate opens a comparable committee for the next election, the funds are carried over without attribution, and the same donors are convinced to donate more money. That needs to be fixed. The other issue is the term “withdrawn” because a candidate cannot have the name removed from the ballot.

Chairman Randolph asked if the term “withdrawn” is defined elsewhere or if it would need to be done.

Ms. Menchaca replied that the term “withdrawn” is included in the surplus funds regulation 18951, although not specifically defined. With respect to the second option, if it were adopted that would mean that if a candidate withdraws the funds would immediately be ineligible for carry over. Under the existing regulation, because it refers to the surplus funds regulation, there would be a short time before the funds become surplus.

Commissioner Downey asked what a withdrawn candidate would do with the surplus money.

Ms. Menchaca replied that the funds would not become surplus until that particular election took place. At the point they would be ineligible for carry over.

Chairman Randolph confirmed that there would still be a period of time from the date of the press conference until the date the funds become ineligible.

Ms. Menchaca responded that is correct under the current regulation.

Commissioner Downey asked what the circumstances would be where the announcement of withdrawal would trigger an immediate surplus fund.

Ms. Menchaca said that if option two is chosen, that would cause the funds to become immediately ineligible.

Ms. Wardlow clarified that under option two the funds do not become surplus and ineligible to be used because they can still be used with attribution, but at the end of the post-election reporting period the funds become surplus and cannot even be transferred with attribution.

Chairman Randolph confirmed that under option two, the exact date of withdrawal becomes very important because it determines when the funds become ineligible.

Commissioner Downey said that the only real problem seems to be defining “withdrawal.”

Chairman Randolph replied that one option is to decide that the candidate does not become subject to the regulation unless the candidate never even files. If the candidate files for an office, then the funds can carry over, if option two is not chosen. The people who withdraw can be included but then the Commission will have to define “withdraw.”

Commissioner Downey asked if the loophole of candidates putting their names on ballots without running is actually a current problem.

Ms. Wardlow replied that the question has to do with the language in option one, where a candidate opens a campaign bank account but never files candidacy papers to appear on the ballot and whether those funds would be eligible to be carried over. That situation is more likely to occur.

Chairman Randolph opined that option one may be sufficient and that option two would confuse the issue.

Commissioner Downey agreed that option one makes more sense.

Commissioner asked if candidates were in the habit of having their names put on the ballot just to have their names put in the public to possibly run at a later date.

Chairman Randolph said that being the losing candidate would most likely not help the candidate at a later time.

Chairman Randolph asked for any public comment.

There was none.

Chairman Randolph asked for any comments from the Commission.

Commissioner Blair confirmed that the decision is between option one or option two.

Chairman Randolph replied that both option could be chosen.

Commissioner Blair asked why not choose both if the Commission cannot decide which is more appropriate.

Chairman Randolph replied that the Commission can do that but that “withdrawal” would have to be defined if that was the decision.

Mark Krausse, Executive Director, said that the elections code says that a candidate cannot withdraw. No candidate whose declaration of candidacy has been filed may withdraw as a candidate at the primary election.

Commissioner Downey said that option one does not include the option to withdrawal.

Chairman Randolph asked if there was any objection to option two not coming back at all.

There were no objections.

Mr. Espinosa confirmed that staff will come back with option one including the new language suggested.

Chairman Randolph agreed.

### **Item #12. Legislative Report**

Mr. Krausse said that there is nothing to add to the written report.

Chairman Randolph noted that AB 1558 passed through the Assembly and has moved on to the senate.

Commissioner Blair asked about the Hancock bill.

Mr. Krausse explained that this bill was introduced last session as well and it is a program that is already in law in Maine and Arizona. The language in this bill would put it on the ballot for the voters to approve and the reason that is being done is because it would require two-thirds vote in the legislature and it was not getting that. Mr. Krausse said it is likely that, if the bill fails in the legislative process, it will probably be put on the ballot by initiative.

Commissioner Remy said that it would be useful to discuss what would happen if the additional resources proposed in SB 1120 became available.

Chairman Randolph said that the Commission could map out the status that it is at now, where the Commission would be if the resources became available, and what the Commission could not do if the resources do not become available.

Chairman Randolph asked for any public comment.

There was none.

### **Item #22. Executive Director's Report**

Mr. Krausse introduced Brian Lau, the newest addition to the legal staff.

### **Item #25. Litigation Report.**

Luisa Menchaca reported that there was nothing to add to the written report.

Chairman Randolph said that the Commission is still working on briefing in the Citizens case and the briefing in the Tribal cases is complete and it will be a long time before the Commission will get a hearing in front of the California Supreme Court. Hopefully sometime this year.

Commissioner Blair said that while the trial is waiting the tribes are free to continue normal political activities.

Chairman Randolph said that is true.

Chairman Randolph reported that there are no closed session items for this meeting, therefore closed session is canceled.

The meeting adjourned at 11:07 a.m.

Dated: February 16, 2006

Respectfully submitted,

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Kelly Nelson  
Commission Assistant

Approved by:

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Liane Randolph  
Chairman